

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MOLDEX METRIC, INC.,

Plaintiff,

v.

3M COMPANY and 3M INNOVATIVE
PROPERTIES COMPANY,

Defendants.

Civil No. 14-cv-01821-JNE/FLN

DECLARATION OF AARON A. MYERS

I, Aaron A. Myers, hereby declare under penalty of perjury that the following is true and correct:

1. I am an attorney admitted to practice in the State of Minnesota and a member of the law firm of Barnes & Thornburg LLP ("Barnes & Thornburg"). I make this declaration in the above-captioned lawsuit in support of 3M's Motion to Dismiss Plaintiff's Complaint. I have personal, first-hand knowledge of the following facts, and if called as a witness, I could and would competently testify thereto.

2. Barnes & Thornburg represented 3M Company and 3M Innovative Properties Company (together, "3M") as plaintiffs in the patent infringement litigation (the "Patent Litigation") that 3M commenced against Moldex Metric, Inc. ("Moldex") in March 2012 before this Court, Index No. 12-cv-00611-JNE-FLN, for infringement of two of 3M's patents: U.S. Patent No. 6,070,693 and U.S. Patent No. 7,036,157.

3. I was one of the two Barnes & Thornburg partners who led the firm's representation of 3M in the Patent Litigation. Thus, I am familiar with the facts, events, documents, arguments, and witnesses at issue in that Litigation.

4. During the pendency of the Patent Litigation, Moldex threatened to bring claims against 3M with respect to the Noise Reduction Rating ("NRR") associated with 3M's Combat Arms earplugs. Specifically, in a letter dated June 13, 2012 that its counsel sent to 3M, c/o Barnes & Thornburg, a copy of which is attached to this declaration as **Exhibit A**, Moldex asserted that 3M's "advertised NRR of zero" for Combat Arms was "inaccurate and in violation of the Noise Control Act of 1972," as well as "misleading," and it threatened to file a Citizen's Suit under section 4911 of the Noise Control Act against 3M.

5. Among other things, Moldex referenced in and enclosed with its letter a photo of the packaging for Combat Arms and a brochure for Combat Arms. The complete set of enclosures to Moldex's June 13, 2012 letter, including the Combat Arms packaging photo and the Combat Arms brochure, are included in **Exhibit A** to this declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 27 day of June, 2014, at Minneapolis, Minnesota.


AARON A. MYERS